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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,132	11/26/2003	Gerald Duhamel	P1068US00	4651

77130 7590 05/11/2010

LABTRONIX CONCEPT
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EXAMINER

RUSTEMEYER, MALINA K

ART UNIT	PAPER NUMBER
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3714

NOTIFICATION DATE	DELIVERY MODE
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05/11/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@benoit-cote.com
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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/722,132</p>	<p>Applicant(s) DUHAMEL ET AL.</p>	
	<p>Examiner Malina K. Rustemeyer</p>	<p>Art Unit 3714</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

Malina K. Rustemeyer
Examiner
Art Unit: 3714

Continuation of 11. does NOT place the application in condition for allowance because: they are not persuasive. Applicant argues Scarne does not teach "determining whether a game ending state is achieved based on said comparison." However, Examiner disagrees. The claim language does not precisely state when the comparison happens. Furthermore, when the player wants to cash in the winning ticket, the ticket has to be submitted to the ticket collector (see pg 160, lines 7-9), therefore making it a game ending state. Submitting your winning ticket to the ticket collector is one example of a game ending state.

Applicant argues Scarne does not teach "if said game ending state is achieved, ending said participation game for all of said plurality of players by preventing association of said current draw result with a further play request". However, as stated in above action, Scarne discloses the claimed invention except for ending said participation game for all of said plurality of players by preventing association of said current draw result with a further play request. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create an electronic version of the game using a plurality of players that ends when a winner is selected, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192. Applicant agrees that it would be easy and obvious to make an electronic version of the game described by Scarne. The electronic version of this game reads on the applicant's invention.

Applicant argues Scarne does not teach "wherein all of said play outcomes are based on said current draw result." However, Examiner disagrees. All of the winning and losing outcomes are based on current draw result because in order to determine if they are winning or losing outcomes, the player must see the current draw result.

Concerning Applicant arguments towards a game ending state, Examiner disagrees. When the player wants to cash in the winning ticket, the ticket has to be submitted to the ticket collector (see pg 160, lines 7-9), therefore making it a game ending state. Submitting your winning ticket to the ticket collector is one example of a game ending state. Therefore, Scarne reads on the claim language.

they are not persuasive. Applicant argues Scarne does not teach "associating a current draw result comprising at least two numbers to said play request." However, Examiner disagrees. The term current is interpreted to mean each day for the week. The current draw results are the results for the current week. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., at the time of the ticket sale) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).